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JAN 26 2006

RICHARD W. WIERING  
 CLERK U.S. DISTRICT COURT,  
 NORTHERN DISTRICT OF CALIFORNIA

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 LEVI STRAUSS & CO.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

05221

RMW

LEVI STRAUSS & CO.,

Case No. \_\_\_\_\_

Plaintiff,

**COMPLAINT FOR FEDERAL  
 TRADEMARK INFRINGEMENT;  
 UNFAIR COMPETITION;  
 DILUTION; CALIFORNIA  
 DILUTION AND TRADEMARK  
 INFRINGEMENT; AND UNFAIR  
 COMPETITION (INJUNCTIVE  
 RELIEF SOUGHT)**

v.

WICKED FASHIONS, INC., a New York  
 corporation,

Defendant.

**JURY TRIAL DEMAND**

Plaintiff Levi Strauss & Co. ("LS&CO.") complains against Defendant Wicked Fashions, Inc. ("Wicked Fashion") as follows:

**JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT**

1. Plaintiff's first, second and third claims arise under the Trademark Act of 1946 (the Lanham Act), as amended by the Federal Trademark Dilution Act of 1995 (15 U.S.C. §§ 1051, et seq.). This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331 (federal question) and 15 U.S.C. § 1121 (Lanham Act). This Court has supplemental jurisdiction over the remaining state law claims under 28 U.S.C. § 1367.

2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Wicked Fashions

1 transacts affairs in this district and a substantial part of the events giving rise to the claims asserted  
2 herein arose in this district.

3 3. Intra-district assignment to any division of the Northern District is proper under Local  
4 Rule 3-2(c) and the Assignment Plan of this Court as an "Intellectual Property Action."

### 5 **PARTIES**

6 4. LS&CO. is a Delaware corporation which has its principal place of business at Levi's  
7 Plaza, 1155 Battery Street, San Francisco, California 94111. Since approximately 1850, LS&CO. has  
8 manufactured, marketed and sold a variety of clothing products, including its traditional denim blue  
9 jean products.

10 5. LS&CO. is informed and believes that defendant Wicked Fashions is a New York  
11 corporation with its principal place of business at 140 Kero Road, Carlstadt, New Jersey. Wicked  
12 Fashion distributes, produces or manufactures or has distributed, produced or manufactured jeans  
13 under the brand name "Southpole" which are offered for sale or sold in this judicial district and  
14 throughout the world, including North America. LS&CO. is informed and believes that Wicked  
15 Fashions has authorized, directed, and/or actively participated in the wrongful conduct alleged herein.

### 16 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

#### 17 **LS&CO.'s Use Of Its Trademarks**

18 6. For many years prior to the events giving rise to this Complaint and continuing to the  
19 present, LS&CO. annually has spent great amounts of time, money, and effort advertising and  
20 promoting its products. Each year, LS&CO. has sold tens of millions of apparel products, primarily  
21 denim jeans, all over the world, including North America and California. Through this investment,  
22 LS&CO. has created considerable good will and a reputation for quality products. LS&CO. marks its  
23 Levi's® jeans products with a set of trademarks that are famous around the world. LS&CO.  
24 continuously has used these trademarks, some for well over a century.

25 7. Most of LS&CO.'s trademarks are federally registered; all are in full force and effect,  
26 and exclusively owned by LS&CO. LS&CO. continuously has used each of its trademarks, from the  
27 registration date or earlier, until the present and during all time periods relevant to LS&CO.'s claims.  
28

**LS&CO.'s Arcuate Stitching Design and Tab Device Trademarks**

8. Among its marks, LS&CO. owns the famous Arcuate Stitching Design Trademark (hereinafter the "Arcuate Trademark"), which consists of a distinctive pocket stitching design that is the oldest known apparel trademark in the United States. LS&CO. has used the Arcuate Trademark continuously since 1873 in interstate commerce on clothing products. LS&CO. first used the Arcuate Trademark on jeans and later used it on trousers, pants, shorts and skirts. The Arcuate Trademark is famous and is recognized around the world and throughout North America by consumers as signifying a high quality LEVI'S ® jean, pant, short, skirt or shirt.

9. LS&CO. also owns the famous Tab Device Trademark (hereinafter the "Tab Trademark"), which consists of a small marker of textile or other material sewn into one of the regular structural seams of the garment. LS&CO. has used the Tab Trademark continuously since 1936 in interstate commerce on clothing products.

10. LS&CO. first began to display the Tab Trademark on the rear pocket of its pants in 1936 when LS&CO.'s then National Sales Manager, Leo Christopher Lucier, proposed placing a folded cloth ribbon in the structural seams of the rear pocket. The purpose of this "tab" was to provide "sight identification" of LS&CO.'s products. Given the distinctiveness of the Tab Trademark, Mr. Lucier noted that "no other maker of overalls can have any other purpose in putting a colored tab on an outside patch pocket, unless for the express and sole purpose of copying our mark, and confusing the customer."

11. Examples of LS&CO.'s use of the Arcuate and Tab Trademarks on LEVI'S® jeans are attached as Exhibit A.

12. LS&CO. owns, among others, the following United States and California Registrations for its Arcuate and Tab Device Trademarks, attached as Exhibit B:

- a. Registration No. 1,139,254 (first used as early as 1873; registered September 2, 1980);
- b. Registration No. 404,248 (first used as early as 1873; registered November 16, 1943).

- 1 c. Registration No. 088399 (first used as early as 1873; registered August 24,  
2 1988).
- 3 d. Registration No. 356,701 (first used as early as September 1, 1936; registered  
4 May 10, 1938);
- 5 e. Registration No. 516,561 (first used as early as September 1, 1936; registered  
6 October 18, 1949);
- 7 f. Registration No. 577,490 (first used as early as September 1, 1936; registered  
8 July 21, 1953);
- 9 g. Registration No. 720,376 (first used as early as October 9, 1957; registered  
10 August 22, 1961);
- 11 h. Registration No. 774,625 (first used as early as May 22, 1963; registered  
12 August 4, 1964);
- 13 i. Registration No. 775,412 (first used as early as October 9, 1957; registered  
14 August 18, 1964); and
- 15 j. Registration No. 1,157,769 (first used as early as September 1, 1936; registered  
16 June 16, 1961).
- 17 The above United States registrations have become incontestable under the provisions of 15 U.S.C. §  
18 1065.
- 19 k. Registration No. 2,791,156 (first used as early as September 1, 1936; registered  
20 December 9, 2003)
- 21 l. Registration No. 2,794,649 (first used as early as 1873; registered December 16,  
22 2003.)

23 **Wicked Fashions' Infringement of LS&CO.'s Trademarks**

24 13. Beginning at some time in the past and continuing until the present, Wicked Fashions,  
25 with actual knowledge of LS&CO.'s federal registered trademarks, has manufactured or arranged for  
26 the manufacture for offer or sale, produced, designed, promoted and sold clothing, including denim  
27 jeans, that infringe and dilute LS&CO.'s Tab and Arcuate Trademarks (hereinafter the "infringing  
28 products").

1           14.     LS&CO.'s Arcuate Trademark was the subject of a prior dispute between LS&CO. and  
2 Wicked Fashions with respect to Southpole brand jeans. Specifically, LS&CO. objected to Wicked  
3 Fashions' use of a stitching design under the Southpole label that infringed the Arcuate Trademark.  
4 By letter dated October 6, 2004, Wicked Fashions represented that it had ceased using the infringing  
5 stitching. Based on that representation, LS&CO. did not take further action against Wicked Fashions  
6 at the time, but expressly reserved its rights to challenges any stitching or other designs violating  
7 LS&CO.'s trademarks in the future. Wicked Fashions is thus well acquainted with LS&CO.'s Arcuate  
8 Trademark.

9           15.     LS&CO.'s Tab Trademark was also the subject of a prior dispute between LS&CO. and  
10 Wicked Fashions with respect to Southpole brand jeans. Specifically, LS&CO. objected to Wicked  
11 Fashion's use of tabs that infringed the Tab Trademark. LS&CO. filed a complaint against Wicked  
12 Fashions in United States District Court for the Northern District of California, alleging claims for  
13 trademark infringement, dilution, and unfair competition under federal and California law. By  
14 settlement agreement dated March 19, 2003, Wicked Fashions agreed to stop using the tabs and any  
15 other tab substantially similar to those infringing tabs. Wicked Fashions is thus well acquainted with  
16 LS&CO.'s Tab Trademark.

17           16.     LS&CO. is informed and believes that Wicked Fashions produces, manufactures,  
18 sources, markets, designs, offers and/or sells jeans throughout the world, including North America,  
19 that display tabs on the rear pockets that are confusingly similar to LS&CO.'s Tab Trademark. These  
20 infringing products, including but not limited to the examples illustrated in Exhibit C, are referred to  
21 hereinafter as the "Southpole tabs." The Southpole tabs, as used by Wicked Fashions, are confusingly  
22 similar to LS&CO.'s Tab Trademark.

23           17.     LS&CO. is informed and believes that Wicked Fashions produces, manufactures,  
24 sources, markets, designs, offers and/or sells jeans throughout the world, including North America,  
25 that display stitching on the rear pockets that are confusingly similar to LS&CO.'s Arcuate Trademark.  
26 These infringing products, including but not limited to the examples illustrated in Exhibit D, are  
27 referred to hereinafter as the "Southpole stitching." The Southpole stitching, as used by Wicked  
28 Fashions, is confusingly similar to LS&CO.'s Arcuate Trademark.

18. LS&CO. is informed and believes that Wicked Fashions has produced, manufactured, designed, marketed, offered for sale and sold substantial quantities of the infringing products, and obtained and continues to obtain substantial profits from such sales.

19. Wicked Fashions' actions have caused and will cause LS&CO. irreparable harm for which money damages and other remedies are inadequate. Unless Wicked Fashions is restrained by this Court, Wicked Fashions will continue and/or expand the illegal activities alleged in this Complaint and otherwise continue to cause great and irreparable damage and injury to LS&CO. through, *inter alia*:

a. Depriving LS&CO. of its statutory rights to use and control use of its trademarks;

b. Creating a likelihood of confusion, mistake and deception among consumers and the trade as to the source of the infringing products;

c. Causing the public falsely to associate LS&CO. with Wicked Fashions or vice versa;

d. Causing incalculable and irreparable damage to LS&CO.'s goodwill and diluting the capacity of its Tab Trademark and Arcuate Trademark to differentiate LEVI'S® from others; and

e. Causing LS&CO. to lose sales of its genuine clothing products.

20. Accordingly, in addition to other relief sought, LS&CO. is entitled to preliminary and permanent injunctive relief against Wicked Fashions and against all persons acting in concert with it.

**FIRST CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

21. LS&CO. realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 20 of this Complaint.

22. Without LS&CO.'s consent, Wicked Fashions has used, in connection with the sale, offering for sale, distribution or advertising of Wicked Fashions' goods, designs that infringe upon LS&CO.'s registered Arcuate and Tab Trademarks, including without limitation the designs depicted

1 in Exhibits C and D hereto.

2 23. These acts of trademark infringement have been committed with the intent to cause  
3 confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

4 24. As a direct and proximate result of Wicked Fashions' infringing activities, LS&CO. has  
5 suffered substantial damage and is entitled to injunctive relief under 15 U.S.C. § 1116 (a).

6 25. Wicked Fashions' infringement of LS&CO.'s trademarks as alleged herein is an  
7 exceptional case and was intentional, entitling LS&CO. to treble its actual damages and to an award of  
8 attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b).

9  
10 **SECOND CLAIM**  
11 **FEDERAL UNFAIR COMPETITION**  
12 **(False Designation of Origin and False Description)**  
13 **(15 U.S.C. § 1125; Lanham Act § 43(a))**

14 26. LS&CO. realleges and incorporates by reference each of the allegations contained in  
15 paragraphs 1 through 25 of this Complaint.

16 27. Wicked Fashions' conduct constitutes the use of words, terms, names, symbols or  
17 devices tending falsely to describe the infringing products, within the meaning of 15 U.S.C. §  
18 1125(a)(1). Wicked Fashions' conduct is likely to cause confusion, mistake, or deception by or in the  
19 public as to the affiliation, connection, association, origin, sponsorship or approval of the infringing  
20 products to the detriment of LS&CO. and in violation of 15 U.S.C. § 1125(a)(1).

21 **THIRD CLAIM**  
22 **FEDERAL DILUTION OF FAMOUS MARKS**  
23 **(Federal Trademark Dilution Act of 1995)**  
24 **(15 U.S.C. § 1125(c); Lanham Act § 43(a))**

25 28. LS&CO. realleges and incorporates by reference each of the allegations contained in  
26 paragraphs 1 through 27 of this Complaint.

27 29. LS&CO.'s Arcuate and Tab Trademarks are distinctive and famous within the meaning  
28 of the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c).

30. Wicked Fashions' activities as alleged herein constitute dilution of the distinctive

1 quality of LS&CO.'s trademarks in violation of the Federal Trademark Dilution Act of 1995, 15  
2 U.S.C. § 1125(c).

3 31. LS&CO. is entitled to injunctive relief pursuant to 15 U.S.C. § 1125(c).

4 32. Because Wicked Fashions willfully intended to trade on LS&CO.'s reputation or to  
5 cause dilution of LS&CO.'s famous trademarks, LS&CO. is entitled to damages, extraordinary  
6 damages, fees and costs pursuant to 15 U.S.C. § 1125(c)(2).

7 **FOURTH CLAIM**  
8 **CALIFORNIA DILUTION AND TRADEMARK INFRINGEMENT**  
9 **(Cal. Bus. & Prof. Code §§ 14320, 14330, 14335, 14340)**

10 33. LS&CO. realleges and incorporates by reference each of the allegations contained in  
11 paragraphs 1 through 32 of this Complaint.

12 34. Wicked Fashions' intentional and blatant infringement of LS&CO.'s federal and state  
13 registered trademarks constitutes infringement and dilution under California Business & Professions  
14 Code §§ 14320, 14330, and 14335.

15 35. Wicked Fashions infringed LS&CO.'s Arcuate and Tab Trademarks with knowledge  
16 and intent to cause confusion, mistake or deception.

17 36. Wicked Fashions' conduct is aggravated by that kind of willfulness, wantonness and  
18 conscious indifference to the rights and welfare of LS&CO. for which California law allows the  
19 imposition of exemplary damages.

20 37. Pursuant to California Business & Professions Code § 14340, LS&CO. is entitled to  
21 injunctive relief and damages in the amount of three times Wicked Fashions' profits and three times all  
22 damages suffered by LS&CO. by reason of Wicked Fashions' manufacture, use, display or sale of  
23 infringing goods.

24 **FIFTH CLAIM**  
25 **CALIFORNIA UNFAIR COMPETITION**  
26 **(Cal. Bus. & Prof. Code § 17200)**

27 38. LS&CO. realleges and incorporates by reference each of the allegations contained in  
28 paragraphs 1 through 37 of this Complaint.

39. Wicked Fashions' infringement of LS&CO.'s Arcuate and Tab Trademarks constitute  
"unlawful, unfair or fraudulent business act[s] or practice[s] and unfair, deceptive, untrue or



misleading advertising" within the meaning of California Business & Professions Code § 17200.

40. As a consequence of Wicked Fashions' actions, LS&CO. is entitled to injunctive relief and an order that Wicked Fashions disgorge all profits on the manufacture, use, display or sale of infringing goods.

### **PRAYER FOR JUDGMENT**

WHEREFORE, LS&CO. prays that this Court grant it the following relief:

41. Adjudge that LS&CO.'s Arcuate and Tab Trademarks have been infringed by Wicked Fashions in violation of LS&CO.'s rights under common law, 15 U.S.C. § 1114, and/or California law;

42. Adjudge that Wicked Fashions has competed unfairly with LS&CO. in violation of LS&CO.'s rights under common law, 15 U.S.C. § 1125(a), and/or California law;

43. Adjudge that Wicked Fashions' activities are likely to, or have, diluted LS&CO.'s famous Arcuate and Tab Trademarks in violation of LS&CO.'s rights under common law, 15 U.S.C. § 1125(c), and/or California law;

44. Adjudge that Wicked Fashions and each of its agents, employees, attorneys, successors, assigns, affiliates, and joint venturers and any person(s) in active concert or participation with it, and/or any person(s) acting for, with, by, through or under them, be enjoined and restrained at first during the pendency of this action and thereafter permanently from:

a. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising, designing, or promoting any goods that display any words or symbols that so resemble LS&CO.'s Arcuate and Tab Trademarks as to be likely to cause confusion, mistake or deception, on or in connection with any product that is not authorized by or for LS&CO., including without limitation any product that bears the Southpole stitching, the Southpole tabs, or any other confusingly similar approximation of LS&CO.'s Arcuate Trademark and Tab Trademark;

b. Using any word, term, name, symbol, device or combination thereof that causes or is likely to cause confusion, mistake or deception as to the affiliation or association of Wicked Fashions or its goods with LS&CO. or as to the origin of Wicked Fashions' goods, or any false designation of origin, false or misleading description or representation of fact;

c. Further infringing the rights of LS&CO. in and to any of its trademarks in its

1 LEVI'S® brand products or otherwise damaging LS&CO.'s goodwill or business reputation;

2 d. Otherwise competing unfairly with LS&CO. in any manner; and

3 e. Continuing to perform in any manner whatsoever any of the other acts  
4 complained of in this Complaint;

5 45. Adjudge that Wicked Fashions be required immediately to supply LS&CO.'s counsel  
6 with a complete list of individuals and entities from whom or which it purchased, and to whom or  
7 which it sold, offered for sale, distributed, advertised or promoted, infringing products as alleged in  
8 this Complaint;

9 46. Adjudge that Wicked Fashions be required immediately to deliver to LS&CO.'s  
10 counsel Wicked Fashions' entire inventory of infringing products, including without limitation pants  
11 and any other clothing, packaging, labeling, advertising, and promotional material and all plates,  
12 molds, matrices and other material for producing or printing such items, which is in Wicked Fashions'  
13 possession or subject to its control and which infringe LS&CO.'s Arcuate and Tab Trademarks as  
14 alleged in this Complaint;

15 47. Adjudge that Wicked Fashions, within thirty (30) days after service of the Judgment  
16 demanded herein, be required to file with this Court and serve upon LS&CO.'s counsel a written  
17 report under oath setting forth in detail the manner in which they have complied with the Judgment;

18 48. Adjudge that LS&CO. recover from Wicked Fashions its actual damages and lost  
19 profits in an amount to be proven at trial, that Wicked Fashions be required to account for any profits  
20 that are attributable to its illegal acts, and that LS&CO. be awarded the greater of (1) three times  
21 Wicked Fashions' profits or (2) three times any damages sustained by LS&CO., under 15 U.S.C. §  
22 1117, plus prejudgment interest;

23 49. Impose a constructive trust on all Wicked Fashions' funds and assets that arise out of  
24 Wicked Fashions' infringing activities;

25 50. Adjudge that Wicked Fashions be required to pay LS&CO. punitive damages for their  
26 oppression, fraud, malice and gross negligence, whether grounded on proof of actual damages  
27 incurred by LS&CO. or on proof of Wicked Fashions' unjust enrichment;

28 51. Adjudge that LS&CO. be awarded its costs and disbursements incurred in connection

1 with this action, including LS&CO.'s reasonable attorneys' fees and investigative expenses; and

2 52. Adjudge that all such other relief be awarded to LS&CO. as this Court deems just and  
3 proper.

4 DATED: January 26, 2006

Respectfully submitted,

5  
6 By: 

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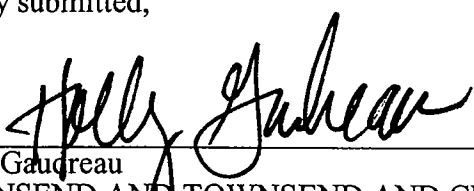
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands that this action be tried to a jury.

DATED: January 26, 2006

Respectfully submitted,

By:

  
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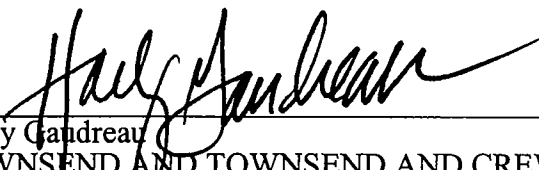
**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil LR 3-16, the undersigned certifies that as of this date, there is no such interest to report.

DATED: January 26, 2006

Respectfully submitted,

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